

Application No.: 10/081627

Docket No.: 00306-00203-US

REMARKS

The applicants respectfully request reconsideration in view of the amendment and the following remarks. Support for "eye irritating amount" in amended claim 1 can be found in the specification at page 3, lines 5-6 and the proviso in the original claim 55. Support in claims 1, 29, 52 and 55, for the term "phosphorous acid and phosphoric acid" for the term "phosphorus containing acid" can be found in the original claims 8 and 9. The applicants have amended claims 25, 27 and 28 as suggested by the Examiner. Support for newly added claims 57 and 58 can be found in the original claims 27 and 28. Support for newly added claim 59 can be found in the specification at page 3, lines 3-5. Support for newly added claim 60 can be found in the original claim 25. The PTO can charge Deposit Account number 03-2775 the fee of \$72.00 for the extra four dependent claims over twenty added.

Claim 26 is objected to under 37 CFR 1.75 as being a duplicate of claim 25. The applicants respectfully traverse this rejection. Claim 26 is not a duplicate claim, since it does not contain phenoxy carboxylic acid. Therefore, it is a narrower claim since one of the Markush groups is not present.

Claims 25, 27 and 28 were rejected under 35 U.S.C. § 112, second paragraph. Claims 11, 33 and 52 were rejected under 35 U.S.C. § 112, second paragraph. Claims 1-56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Berk *et al.* U.S. Patent No. 5,389,598 ("Berk"), Berger *et al.* U.S. Patent No. 6,121,200 ("Berger"), Brigrance U.S. Patent No. 6,432,878 ("Brigrance") and Reiersen U.S. Patent No. 6,329,322 ("Reiersen"). The applicants respectfully traverse these rejections.

Section 112 Rejections

Claims 25, 27 and 28 were rejected under 35 U.S.C. § 112, second paragraph. Claims 11, 33 and 52 were rejected under 35 U.S.C. § 112, second paragraph. The applicants believe that the claims as amended are in compliance with 35 U.S.C. § 112, second paragraph. With respect to claims 11, 33 and 52, the applicants believe that it is clear to one of ordinary skill in the art that the terminal group is -OH. In order to be reactive the compound must have OH at the

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termination points. The oxygen of the alkoxy group is bonded to the hydrogen. If it was intended to be a hydrogen at the end of the CH₂ group, then it would have been written as (CH₃CH₂O) instead of (CH₂CH₂O). For the above reasons, these rejections should be withdrawn.

Section 103 Rejection

Claims 1-56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Berk, Berger, Brigance and Reiersen. The applicants have four independent claims (claims 1, 29, 52 and 55).

Claims 1 and 55 require if a carboxylic acid is present, that it is present in an eye irritating amount. Claims 29 and 52 require phosphorous acid or phosphoric acid and do not require a carboxylic acid. Berk requires an eye irritation reducing amount of a mono-carboxylic acid (see column 6, lines 38-46); Berger also requires an eye irritation reducing amount of the surfactant (see column 9, lines 22-46); and Brigance further requires an eye irritation reducing amount of component (see column 3, lines 19-49). Berk, Berger or Brigance teach away from the applicants' claimed invention and do not teach using an amount of carboxylic acid that does not reduce eye irritation. Reiersen does not teach using carboxylic acid. Therefore, Reiersen, Berk, Berger and Brigance teach away from the applicants' claims 1 and 55.

Reiersen requires a specific phosphorous containing compound, but does not teach the use of phosphorous acid or phosphoric acid as is required by claims 29 and 52. Claims 1 and 55 can require the use of phosphorous acid or phosphoric acid or a carboxylic acid which neither of these are not taught by Reiersen. Berk, Berger and Brigance do not teach using phosphorous acid or phosphoric acid. For the above reasons, these rejections should be withdrawn.

A two-month extension fee has been paid. No additional fees are due. If there are any additional fees due in connection with this filing, including any fees required for an additional extension of time under 37 CFR 1.136, such an extension is requested and the Commissioner is authorized to charge or credit any overpayment to Deposit Account No. 03-2775.

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For the reasons set forth above, Applicants believe that the claims are patentable over the references cited and applied by the Examiner and a prompt and favorable action is solicited. The applicants believe that these claims are in condition for allowance, however, if the Examiner disagrees, the applicants respectfully request that the Examiner telephone the undersigned at (302) 888-6270.

Respectfully submitted,

By

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